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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,146	11/25/2003	Hue Scott Snowden	19076A	9253
23556	7590	05/18/2006	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC.			FLETCHER III, WILLIAM P	
401 NORTH LAKE STREET			ART UNIT	
NEENAH, WI 54956			PAPER NUMBER	

1762

DATE MAILED: 05/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/723,146

Applicant(s)

SNOWDEN ET AL.

Examiner

William P. Fletcher III

Art Unit

1762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 28-32 and 35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27, 33 and 34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7 pages total</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. No preliminary amendment has been located in the application file record. The examiner presumes that no preliminary amendment has been filed.
2. Claims 1-35 are pending.

### ***Election/Restrictions***

3. Claims 28-32 and 35 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 02/27/2006.

### ***Information Disclosure Statement***

4. The information disclosure statements filed 03/01/2004, 11/04/2004, 01/18/2005, 01/21/2005, and 03/25/2005 have been considered by the examiner.

### ***Drawings***

5. The drawings were received on 08/30/2004. These drawings are accepted by the examiner.

### ***Specification***

6. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.
7. The use of numerous trademarks has been noted in this application. Trademarks should be capitalized wherever they appears and be accompanied by the corresponding generic terminology.

Art Unit: 1762

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

8. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

A. Independent claim 33 recites “an aqueous topical treatment solution that does not include an organic phosphate ester...”. The specification nowhere discloses a treatment solution that expressly excludes an organic phosphate ester. Should applicant traverse, the examiner requests applicant provide the page and line number of the specification where antecedent basis may be found.

#### *Claim Objections*

9. Claim 26 is objected to because of the following informalities:

A. The claim should read: ...wherein the ionic fluoropolymer is selected....

Appropriate correction is required.

#### *Claim Rejections - 35 USC § 112*

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. **Claims 1-27, 33, and 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

A. Claims 1, 2, 11-21, and 33 recite various weight percentages. These weight percentages are indefinite because it is unclear with respect to what these weight percentages are measured: the solids content? the total solution weight? the dry weight of the film? Consequently, the metes and bounds of the claimed subject matter are impossible to determine.

B. In claim 5, the term “the antistatic agent” lacks antecedent basis in the claim. Claim 1, from which this claim depends, does not recite an antistatic agent.

C. Claims 6, 7, and 34 recite a decrease of a certain percentage “or less.” This phraseology renders these claims indefinite because “or less” is inclusive of 0%, which contradicts the claim because it is inclusive of no treatment at all.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Art Unit: 1762

**14. Claims 1-4, 6-8, and 11-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baldwin (US 4,411,928 A) in view of Coates (US 4,082,887 A).**

A. With respect to claim 1, Baldwin teaches a process for applying an alcohol repellent finish to a substrate in which the substrate is treated with a solution comprising fluoropolymer and a monovalent salt. See the abstract; 3:15-5:16.

i. The monovalent salt provides antistatic properties. While Baldwin broadly teaches that “a minor amount” is added, a concentration of 0.2-0.5 wt.-% is specifically disclosed [3:40]. Baldwin does not teach a concentration of “less than about 0.05 weight percent,” as claimed.

Generally, differences in concentration will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration is critical.<sup>1</sup> Further, it is the examiner’s position that the amount of monovalent salt antistat in the solution is a result effective variable. The composition must contain enough to impart the desired antistatic properties, but not too much so as to adversely effect the coating and other properties of the composition. Consequently, absent clear and convincing evidence of unexpected results demonstrating the criticality of the claimed wt.-% of monovalent salt, it would have been obvious to one of ordinary skill in the art to modify the process of Baldwin so as to optimize this result-effective variable by routine experimentation.<sup>2</sup>

ii. Baldwin does not explicitly limit the particular type of fluoropolymer that is added to the composition and, more specifically, Baldwin does not explicitly state that the

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<sup>1</sup> MPEP § 2144.05(II)(A)

<sup>2</sup> MPEP § 2144.05(II)(B)

Art Unit: 1762

fluoropolymer is an ionic fluoropolymer. Consequently, one of ordinary skill would have looked to the prior art to find examples of suitable fluoropolymers to impart alcohol repellency.

Coates teaches a process for applying an alcohol repellent finish to a substrate in which alcohol repellency is imparted by the addition of anionic fluoropolymer to the treatment solution [8:36-38].

It would have been obvious to one of ordinary skill in the art to modify the process of Baldwin so as to utilize, as the fluoropolymer, an anionic fluoropolymer, as suggested by Coates. One of ordinary skill in the art would have been motivated to do so by the desire and expectation of successfully imparting alcohol repellency to the substrate.

B. With respect to claims 2 and 8, Baldwin teaches a non-woven fabric substrate [3:49-60]. As noted above, differences in concentration do not support patentability, absent evidence of criticality. Further, as noted above, it would have been obvious to optimize the concentration of monovalent salt by routine experimentation, absent evidence of criticality.

C. With respect to claims 3 and 4, Baldwin does not require that the treatment solution contain any antistatic agent ["when present," 5:19]. Further, it is well-known in the art to apply multiple layers of a coating composition in order to build up a layer of a desired thickness. Since static electricity usually travels across the surface, addition of the antistatic agent to a later-applied layer of the composition would be desirable in order to conserve materials.

D. With respect to claims 6 and 7, neither Baldwin nor Coates teach these properties. Nevertheless, since these are inherent physical characteristics of the treated substrate, and since Baldwin in view of Coates teaches applying the same materials to the same substrate in the same

Art Unit: 1762

fashion as claimed by applicant, it is the examiner's position that the treated fabric of Baldwin in view of Coates inherently possesses these characteristics.

E. With respect to claims 11-18, as noted above, differences in concentration do not support patentability, absent evidence of criticality. As also noted above, it would have been obvious to optimize the concentration of monovalent salt by routine experimentation, absent evidence of criticality. Further, the concentration of fluoropolymer is also a result-effective variable, effecting the degree of alcohol repellency. Consequently, it would be obvious to optimize this result-effective variable as well.

F. With respect to claims 19-21, the amount of fluorine in the dried substrate is directly related to the amount of fluoropolymer and also directly effects the alcohol repellency of the substrate. Consequently, it would be obvious to optimize this result-effective variable as well.

G. With respect to claim 22, Baldwin teaches that the treatment solution contains water [4:43-44].

H. With respect to claim 23, Baldwin teaches that the treatment solution contains an alcohol [4:33-41].

I. With respect to claim 24, Baldwin teaches an alkyl alcohol [4:33-41].

J. With respect to claim 25, although sodium nitrate is not explicitly recited, it is clear that any monovalent salt may be utilized.

K. With respect to claims 26 and 27, it is the examiner's position that the recited species are well-known ionic fluoropolymers which it would have been obvious to utilize.



Art Unit: 1762

**15. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baldwin in view of Coates, as applied to claim 1 above, and further in view of Gilbert (US 4,000,233 A) or Weipert (US 4,169,062 A).**

A. The teaching of Baldwin in view of Coates is detailed above.

An organic phosphate ester antistatic agent is not taught.

Gilbert and Weipert each disclose that it is known in the antistatic art to utilize an organic phosphate ester antistatic agent [Gilbert, 1:12-38; Weipert, Table II].

It would have been obvious to one of ordinary skill in the art to modify the process of Baldwin in view of Coates so as to further incorporate an organic phosphate ester antistatic agent so as to maximize/optimize the antistat effect.

**16. Claim 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baldwin in view of Coates, as applied to claim 1 above, and further in view of Potts (US 5,145,727 A).**

A. The teaching of Baldwin in view of Coates is detailed above.

While Baldwin teaches that the substrate may be medical fabric, the reference does not teach the particular fabric recited in these claims.

Potts teaches applying a surface treatment to a medical fabric. The fabric is S/M/S fabric laminate [17:62-18:5 and 17:47-61].

Consequently it would have been obvious to one of ordinary skill in the art to modify the process of Baldwin in view of Coates so as to utilize, as the non-woven substrate an S/M/S laminate. One of ordinary skill in the art would have been motivated to do so by the desire and expectation of successfully providing a medical fabric to be treated.

Art Unit: 1762

**17. Claims 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baldwin, Coates, Gilbert of Weipert, and Potts.**

A. The teaching of all of these references is detailed above.

All of the features recited in these claims are inherent or would have been obvious to one of ordinary skill for the reasons set-forth above.

***Conclusion***


18. The prompt development of clear issues in the prosecution history requires that applicant's reply to this Office action be fully responsive (MPEP § 714.02). When filing an amendment, applicant should specifically point out the support for any amendment made to the disclosure, including new or amended claims (MPEP §§ 714.02 & 2163). A fully responsive reply to this Office action, if it includes new or amended claims, must therefore include an explicit citation (i.e., page number and line number) of that/those portion(s) of the original disclosure which applicant contends support(s) the new or amended limitation(s).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Fletcher III whose telephone number is (571) 272-1419. The examiner can normally be reached on Tuesday through Saturday, 0700h to 1730h.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy H. Meeks can be reached on (571) 272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1762

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*05/14/2006*  


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Art Unit 1762

Alexandria, VA